

ORDINANCE NO. 1694

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, AMENDING CHAPTER 22 "BUILDINGS AND BUILDING REGULATIONS," OF THE CODE OF ORDINANCES IS AMENDED BY ADOPTING A NEW ARTICLE XI "VACANT BUILDINGS" TO THE CITY OF BAY CITY'S CODE OF ORDINANCES TO PROVIDE FOR THE REGULATION OF VACANT BUILDINGS AND PROPERTY; REPEALING ALL RELATED ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bay City finds that buildings that are vacant and unsecured and/or not properly maintained are a blight and cause deterioration and preservation and financial instability in the City; and

WHEREAS, buildings that are vacant and unsecured and/or not properly maintained are declared to be public nuisances and pose serious threats to the public's health and safety; and

WHEREAS, buildings that are vacant and unsecured and/or not properly maintained are vulnerable to being set on fire; and

WHEREAS, abatement and rehabilitation of buildings that are vacant and unsecured and/or not properly maintained is necessary; and

WHEREAS, after careful consideration by this City Council, it is of the opinion that vacant buildings and property in the City are in need of regulation; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS,

SECTION ONE: That Chapter 22 "Buildings and Building Regulations," of the Code of Ordinances is amended by adopting a new Article XI "Vacant Buildings" which shall read as follows, to wit:

Vacant Buildings and Property

Sec. 22-480 Purpose.

The City of Bay City focuses on the revitalization of the city through marketing, promotions, events and historic preservation. As such, the city council finds that:

- (a) Buildings that are vacant and unsecured and/or not properly maintained are a blight and cause deterioration and preservation and financial instability in the City.
- (b) Buildings that are vacant and unsecured and/or not properly maintained are declared to be public nuisances and pose serious threats to the public's health and safety.
- (c) Buildings that are vacant and unsecured and/or not properly maintained are vulnerable to being set on fire.
- (d) Buildings that are vacant and unsecured and/or not properly maintained attract vagrants, gang members and criminals as prime locations to conduct illegal criminal activities.
- (e) Abatement and/or rehabilitation of buildings that are vacant and unsecured and/or not properly

maintained is necessary.

Sec. 22-481 Definitions.

Unless otherwise expressly stated, the following words, terms, and phrases, when used in this article, have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning: The word "shall" is mandatory; the word "may" is permissive. All public officials, bodies, and agencies to which reference is made are those of the City, unless otherwise indicated.

Administrator means the city's City Manager.

Board when used as a verb means to cover an opening with lumber, wood panels or other material.

Boarded building means a building on which any opening to the outside is covered with lumber, wood panels, or other materials.

Building means any structure used or intended for supporting or sheltering any use or occupancy to which this article applies, and includes an enclosed building, open building, and partially open building.

Commercial means any privately owned place of business operated for a profit to which the public is invited, including, but not limited to any place of amusement or entertainment and includes all adjacent parking areas under the control of the owner of the establishment.

Historical means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The Standards and Guidelines can be applied to historic properties of all types, materials, construction, sizes, and use. They include both the exterior and the interior and extend to a property's landscape features, site, environment, as well as related new construction. To promote and protect the preservation of historic buildings and homes the City of Bay City requires a Certificate of Appropriateness to all historic structures prior to all work. This certificate approves work done on buildings within the historic district. Everything that can be seen from outside the house, including windows, doors, paint colors, materials, rooflines, gutters, fences, and yards must receive a COA confirming that it is appropriate and acceptable.

Owner means the owner of record in the county where the real property is situated; anyone identified as the owner on a registration form; the holder of an unrecorded contract for deed; a mortgagee or vendee in possession; a mortgagor or vendor in possession; and an assignee of rents, receiver, executor, trustee, lessee, or other person in possession or with the right to control of the premises or a portion of the premises. Any person who is included in this definition as an owner has joint and several obligations for compliance with the provisions of this article. A tenant who does not have the right of possession or control of a portion of the building that is unoccupied is not an owner for the purposes of this article.

Properly maintained means taking measures to:

- (a) Prevent the physical deterioration of the building;
- (b) Prevent a decline in the appearance of the building, including keeping painted surfaces with a secure and intact coating and preserving signage without physical deterioration;

- (c) Keep a building in a clean, safe, secure, and sanitary condition, compliant with all applicable codes; and
- (d) Prevent the building from becoming an attractive nuisance.

Residential use means the primary use of property is limited to one of the following:

- (a) Apartment means a room or a group of related rooms, among similar sets in one building, designed for use as a dwelling; or a multi-family building type that is comprised of three or more dwelling units, each having an entrance to a hallway, stairway, or balcony in common with at least one other dwelling unit. Apartments may be leased, rented, or owned in a condominium style of ownership;
- (b) Attached single-family dwelling;
- (c) Detached single-family dwelling; or
- (d) Duplex means a single-family attached building which contains two dwelling units, each of which is totally separated from the other by:
 - (1) An unpierced wall extending from foundation to roof ("side-by-side" duplex); or
 - (2) A ceiling / floor that extends from exterior wall to exterior wall, pierced only by a stairway that is not in side of either dwelling unit ("over-under" duplex).

Secure means to take measures to ensure that the building is weatherproof and watertight and that the interior of the building cannot be accessed by:

- (a) Unauthorized persons; or
- (b) Birds, rodents or other animals through broken windows or other openings in the structure.

Secured by normal measures means the use of structural components of a building, including fixtures, such as doors, unbroken windows, locks, latches, electronic security systems, storm shutters, and security shutters which were installed while the building was constructed or added to the building while the building was occupied and being used for lawful purposes.

Secured by other than normal measures means a building secured by means other than those used in the design of a building or that are normally installed and utilized while a building is occupied and being used for lawful purposes. The term includes boarding any window or door opening.

Unoccupied means not being used for a lawful occupancy.

Vacant building means a building that is any of the following:

- (a) Occupied by an unauthorized person[s] and unsecured;
- (b) Unoccupied and unsecured;
- (c) Unoccupied and/or utilities have not been provided to the building space for a continuous period of time over six (6) months; or
- (d) Unoccupied and has had two or more violations of property maintenance ordinances within the previous twelve (12) month period.

Sec. 22-482 - PROCEDURES

Notice of vacant building:

- (a) Upon reasonable observation that a building may be a vacant building as determined by the Administrator, or receipt of a complaint about a vacant building, the Administrator may, upon their discretion, inspect or cause an inspection of the property, by the Administrator or their designee, in order to determine if the building should be classified as a vacant building.
- (b) If the Administrator determines that a building may be classified as a vacant building under this article, the Administrator:

- (1) Shall direct the attempt to contact the owner or an agent of the owner, identified by any sign posted on the property, or as identified in the Matagorda County Appraisal District records, by telephone or electronic and written communication, and advise the owner or agent that the building is a vacant building in the City and provide them with written property and building maintenance options and financial grant opportunity information from the City to bring the property and building into compliance. The property owner will be advised that they have thirty (30) days to contact the Administrator (or designee) with a plan to remediate maintenance items and advise on lease or sale proceedings. If the property owner fails to contact the Administrator within the thirty (30) days, then the Administrator will require the following measures to be taken by the owner:
 - (A) File a completed Vacant Building Registration within fourteen (14) days from receipt of the notice given, pursuant to Sec. 22-483 of this section;
 - (B) Pay the registration fee required by Sec. 22-484;
 - (C) Take action to correct any code violations; and
 - (D) Take measures to secure the building temporarily by normal or other than normal measures within fourteen (14) days from receipt of the notice given pursuant to Sec. 22-482 and, for areas visible from the roadway, by normal measures within ninety-days (90) from receipt of the notice given, in accordance with the Design Standards set-forth in Sec. 22-487 (b) (1) (2) (3);
- (2) Shall mail certified notice to the owner, with a copy to any agent identified by any sign posted on the property, or as identified in the Matagorda County Appraisal District records, which advises the owner that the building is a vacant building and that the following measures need to be taken by the owner:
 - (A) File a completed vacant building registration as more particularly described in Sec. 22-483 within fourteen (14) days from receipt of the notice given pursuant to this subsection;
 - (B) Pay the registration fee required by Sec. 22-484;
 - (C) Take action to correct any code violations; and
 - (D) Take measures to secure the building temporarily by normal or other than normal measures within fourteen (14) days from receipt of the notice given pursuant to Sec. 22-482 of this section, and, for areas visible from the roadway, by normal measures within ninety-days (90) from receipt of the notice given, in accordance with the Design Standards set-forth in Sec. 22-487 (b) (1) (2) (3);
- (3) May post notice on the building that it appears that the building is a vacant building and that the following measures need to be taken by the owner:
 - (A) File a completed vacant building registration as more particularly described in Sec. 22-483 within fourteen (14) days from the receipt of the notice given pursuant to section (b)(2) of this section;
 - (B) Pay the registration fee required by Sec. 22-484;
 - (C) Take action to correct any code violations; and
 - (D) Take measures to secure the building temporarily by normal or other than normal measures within fourteen (14) days from receipt of the notice given pursuant to Sec. 22-482 of this section, and, for areas visible from the roadway, by normal measures within ninety-days (90) from receipt of the notice given, in accordance with the Design Standards set-forth in Sec. 22-487 (b) (1) (2) (3); and
- (4) May issue a citation or file a complaint in municipal court for any violations of this article or other applicable provisions of this Code. The notice under Sec. 22-482 must comply with the applicable requirements of the V.T.C.A., Local Government Code § 54.005.
- (5) If the owner disputes the Administrator's determination that the building should be classified as a vacant building under this article, the owner shall file a written notice of appeal with the Administrator within fifteen (15) days from receipt of the notice provided

in this section. The Administrator shall schedule a hearing before the City Council to determine whether the building should be classified as a vacant building. The appeal shall be placed on the city council's first available agenda. The city council shall hear the appeal in open session and shall render a decision at the conclusion of the hearing. Said decision shall be final.

Exceptions:

Upon an owner's written request to the Administrator for an exception to the registration fee requirement, and a finding by the Administrator that a vacant structure qualifies as described below, the following shall be exceptions from the registration fee requirements of this chapter:

- 1) A vacant structure that has a City building permit issued for remodel /repair, which complies with the City of Bay City, as follows:
 - a) If the work described in any building permit has not begun within 90 days from the date of issuance, the building permit shall expire and be canceled by the Building Official. Written notice shall be given to the persons affected.
 - b) If the work described in any building permit has not been substantially completed within one year of the date of issuance, the building permit shall expire and be canceled by the Building Official. Written notice shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a special building permit has been obtained.
- 2) A vacant structure that is being actively marketed for sale or lease for less than twelve (12) months by a licensed real estate broker or an owner who is regularly advertising the property; or
- 3) A vacant structure that is under a contract for sale or lease for less than twelve (12) months.

Sec. 22-483 - Registration.

Registration. The owner of a vacant building, or a vacant portion of the building, shall register with the Administrator, in accordance with this subsection, no later than fourteen (14) days after the owner receives written notice under Sec. 22-482. The registration must be verified under a Notary Public, shall be on a form prescribed by the Administrator, and shall at a minimum contain the following information:

- (a) A description of the premises, including its address and legal description;
- (b) The names, addresses, and telephone numbers of all owners with a right of control over the property;
- (c) If the owner does not reside within Matagorda County, the owner shall designate an agent who resides within Matagorda County;
- (d) If owner designates an agent with the authority to independently act on the owner's behalf to repair or maintain the property, the contract, notarized affidavit or power of attorney reflecting such authority and the ability for the agent to receive and accept notices from the city on behalf of the owner shall be submitted;
- (e) The name, address, and telephone number of the owner's property manager or agent, and whether the property manager or agent has the authority to independently act on the owner's behalf to repair or maintain the property;
- (f) The name, address, and telephone number of the owner's property manager or agent authorized to respond to any emergency or alleged violation relating to the vacant building;
- (g) Identify a time frame the building will remain vacant and a plan for maintenance of the building during the period of vacancy with certification from the Administrator that the building is compliant with all applicable codes;

(h) Measures the owner will employ to secure the building, which may include one or more of the methods as required pursuant to the Design Guidelines, under Sec. 22-487 (b) (1) (2) (3).

(i) Administrator's action on registration. The registration submitted by the owner must be approved by the Administrator as being complete and sufficient to secure the vacant building.

(j) Term. A registration is valid for one year from (12 months) from the month of registration, which will also apply if the ownership of the vacant building changes; new registration required.

(k) Annual registrations. The owner of a vacant building shall be required to annually register until such time as the building is returned to an authorized occupancy. The annual registration must be verified under a Notary Public, shall be on a form prescribed by the Administrator and contain a certification from the owner that the information on file with the Administrator is true and correct.

(l) Change in ownership. The owner of a registered vacant building shall be required to disclose to any buyer that the property is under registration with the city as a vacant building. The owner shall also disclose the requirement for the buyer to advise the Administrator of a proposed development plan within ninety (90) days of closing.

(m) Updates. If a change other than described in subsection (e) of this section occurs during the period that a registration is otherwise valid, the owner shall be required to update the information with the city secretary in writing within fourteen (14) days of the change.

Sec. 22-484 - Fees.

Registration fee. The owner of each vacant building shall pay to the Administrator a vacant building registration fee in accordance with the below referenced chart:

(a) Annual Registration Fee: \$250.00 for commercial, \$100 for historical, and \$50 for residential To be paid on the date of registration of the vacant building and shall extend for one year from the month of registration. The registration fee shall be paid annually each year thereafter for as long as the registration remains valid.

(b) Annual Inspection fee. The Administrator shall assess an inspection fee of \$50.00 for inspections of a vacant building against the owner of the vacant building. This fee will be charged annually for inspections associated with registration and thereafter as inspections are warranted in accordance with this article.

(c) Late payment charge. Any fee required by subsections (a) or (b) of this section, which is not timely received by the Administrator, shall be assessed an additional fee of:

(1) Late Registration fee if the Annual Registration fee is not paid on the date of registration of the vacant building or by 15th of the month of registration each year thereafter during such time as said registration is valid: \$50.00.

(2) Late Inspection fee if Inspection Fee is not paid on the date of registration of the vacant building or by 15th of the month of registration each year thereafter during such time as said registration is valid: \$50.00.

Sec. 22-485 - Inspections.

(a) The Administrator shall provide for the building inspection and coordinate a Fire Marshal, Code Enforcement, and Building Inspector's inspection of each registered vacant building at the time of registration and in accordance with the schedule set forth below. The number of years a building has been vacant shall be measured starting on the effective date of this ordinance.

Vacant Building Inspections	
Years Vacant	Frequency
1-3	Annually
4-6	Bi-Annually
7 +	Quarterly

(b) In addition to the inspection referenced in subsection (a) of this section, if there is probable cause to believe that a code violation may be present in the vacant building or on the premises where the vacant building is located, the Administrator shall provide for an additional Fire Marshal, Code Enforcement Officer, and/or Building Inspector's inspection of the vacant building and/or premises.

(c) All inspections shall be conducted to determine compliance with this article and all applicable codes.

(d) The results of the inspection shall be provided to the owner of the vacant building and the person designated by the owner to facilitate a response to any emergency or alleged violation related to the vacant building.

Sec. 22-486 - Standards

Maintenance of vacant building and premises:

(a) Compliance with applicable laws. Any repairs, improvements, or alterations to the vacant building or on the property must comply with all applicable laws, codes, and regulations, and as further defined under Sec. 22-481, Property Maintenance Ordinances.

(b) Duty to clean.

(1) The owner of a vacant building shall remove any garbage and/or rubbish from the interior of the building.

(2) The owner of a vacant building shall remove any garbage, rubbish, high weeds and/or brush from the premises on which the vacant building is located.

(3) The owner shall keep the premises on which the vacant building is located properly maintained until the building is returned to an authorized occupancy or demolished.

(c) Duty to secure.

(1) The owner of a vacant building shall lock or secure all doors, windows, and other openings to the vacant building.

(2) The owner shall keep a vacant building secured, safe, and properly maintained.

(3) If securing a vacant building by normal measures fails to keep the vacant building secure, the owner must use other than normal measures to secure the building, including boarding the vacant building in accordance with the Design Guidelines, under Sec. 22-487

(b) (1) (2) (3).

(4) Failure of the owner to maintain a vacant building in a secured condition, which failure results in abatement by the city, is subject to lien placement and/or any applicable penalties.

(d) Duty to remove or repair. The owner of a vacant building shall promptly remove or repair any element of the building or on the premises that is in a condition of decay or partial ruin by reason of neglect, misuse, or deterioration.

Sec. 22-487-- Standards for boarding a vacant building.

(a) The owner shall take measures to secure the building temporarily by normal or other than normal measures within fourteen (14) days from receipt of the notice given pursuant to Sec. 22-482 of this section, in accordance with the following:

(1) All unsecured doorways, windows, or other exterior openings must be covered by exterior grade wooden structural panels or other means as approved in writing by the Administrator in order to ensure that such doorways, windows and other exterior openings are secured and not easily penetrated.

(2) The materials used to secure the building shall be:

(A) Flat, square, and level; and

(B) In a manner accepted as good workmanship.

The Administrator has the sole discretion to determine if the work was performed in a manner that meets the requirements and intent of this Code.

(3) All exterior materials used to board a vacant building must be painted or coated the same color that is the predominant color of the building.

(4) All broken glass and any other loose material must be removed from the opening before the covering systems are installed.

(5) Exterior access to floor areas above the first floor, such as fire escapes and ladders, must also be secured.

(6) Fascia signs, overhanging signs, roof signs, and all other appurtenances, such as sun visors or awnings must be removed if they are in a dangerous condition or could create such a condition.

(7) All loose or defective materials, trim, or structural elements on the exterior of the building must be removed.

(8) Any condition which may become a hazard or danger to the public must be corrected.

(b) The owner shall secure the building by normal measures for areas visible from the street within ninety-days (90) from receipt of the notice as described, in part, below:

(A) Historical: existing doors, windows, and awnings as prescribed in the Certificate of Appropriateness.

(B) Commercial: normal commercial doors, windows, and awnings.

(C) Residential: normal residential doors, windows, and awnings.

Sec. 22-488 -- Abatement Notice and order to abate.

(a) Upon finding a violation of this article, the Administrator shall serve, in person or by certified mail, return receipt requested, a written notice and order to abate upon the owner.

(b) The notice must advise the owner of the violation and comply with the requirements of V.T.C.A., Local Government Code § 54.005.

(c) If the owner fails to abate the violation within the period stated in the notice or within any additional time as the Administrator may grant, the Administrator may, without further notice, enter upon the property and abate the violation. The owner is liable for the costs incurred by the city to secure the premises and to abate the violation, including any administrative expenses, materials, and labor.

Sec. 22-489 - Notice of costs incurred by city; lien.

- (a) The Administrator shall mail a notice to the owner and lienholder of the property upon which the nuisance has been abated of the costs incurred or expended by the city to abate the nuisance.
- (b) The notice must advise the owner and lienholder that the city proposes to assess its costs against the property and place a lien on the property to collect the costs incurred by the city.
- (c) The Administrator shall file a lien against the property for the city's costs.
- (d) Any lien filed pursuant to this section shall be security for the expenditures made.

Sec. 150.60 -- Enforcement authority.

(1) The Administrator is authorized to enforce the provisions of this chapter and to make all necessary inspections, to issue citations, to give notice, to file applicable charges and to otherwise cooperate in the enforcement of this article, pursuant to section 1-16 or the City of Bay City Code of Ordinances.

Section Two: Other than as amended herein, all remaining sections of Chapter 22 remain in full force and effect. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section Three. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section Four. Effective Date. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

Council Member:	Voted Aye	Voted No	Absent
Robert K. Nelson, Mayor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyce Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Folse Mayor Pro Tem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brad Westmoreland	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Becca Sitz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blayne Finlay	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED on this 23rd day of August, 2022.



Robert K. Nelson, Mayor
City of Bay City, Texas

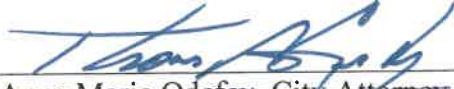


ATTEST:



Jeanna Thompson,
City Secretary
City of Bay City, Texas

APPROVED AS TO FORM:



Anne Marie Odefey, City Attorney

THOMAS A. GWOSDZ, ASSISTANT CITY ATTORNEY